

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CERVECERIA MODELO, S.A. DE C.V.	:	07 CV 7998 (HB)
and MARCUS MODELO S.A. DE C.V.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
USPA ACCESSORIES LLC d/b/a	:	
CONCEPT ONE ACCESSORIES,	:	
	:	
Defendant.	:	

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DEFENDANT'S RESPONSE AND OBJECTIONS TO  
PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT

Defendant, by and through its undersigned attorney,  
hereby responds to Plaintiffs' First Set of Interrogatories to  
Defendant.

GENERAL OBJECTIONS

1. Defendant objects to the extent the Interrogatories seek information which is protected from disclosure by the attorney-client privilege, the work product doctrine or other applicable privileges.

2. Defendant objects to the extent the Interrogatories purport to impose obligations which are inconsistent with and/or beyond the scope imposed by the Fed. R. Civ. P. and the Local Civil Rules.

3. Defendant objects to the extent the Interrogatories seek documents and information that is not within defendants' possession, custody or control.

4. Defendant's search for information and/or documents is ongoing and discovery has not been completed. Defendant reserves the right to supplement and amend this response to include additional objections, information and/or documents.

SPECIFIC OBJECTIONS

Subject to the and without waiving the foregoing general objections which are incorporated by reference, defendant objects and responds as follows:

1. Identify each person who has or whom Defendant believes may have knowledge, or information pertaining to any facts alleged in the pleadings (as defined in Fed R. Civ. P. 7(a)) filed in this action, or any fact underlying the subject matter of this action, and state the specific nature and substance of the knowledge that Defendant believes such person(s) may have.

Response: Defendant objects on the grounds that the Interrogatory is premature in that discovery has not been completed. Subject to the aforementioned objections, care of defendant's counsel: Byron Cohen, director of licensing; Tara Larosa, coordinator of submission and licensing; Dana Tyskiewicz, licensing manager; Cesar Hernandez, merchandiser - product design and licensing; Debra Medley, vice president of merchandising - product development; Kristen Sperling, vice president of production - quality; David Espinoza, controller - royalties; Gary St. Louis, vice president of sales; Harvey Mallis, vice president of sales; Jack Gindi, account manager; David Shaoul, women's division head - cancelled orders; Sam Hafif, president -

product development, quality, royalties and cancelled orders, among other things; care of plaintiffs' counsel: upon information and belief, Juan Fernandez, Jean Marie Ruffini, Jose Maria Arreola Viera, Carlos Fernandez Gonzalez, Shawn Keller, Paul Verdu and representatives of Cramer-Krasselt - licensing, product approval and termination of license agreement; c/o Walmart, 702 Southwest 8<sup>th</sup> Street, Bentonville AR 72716-0365, (479) 273-4000: Javier Zavala, buyer; Ricci Leonard, buyer; Eric Pugh, buyer; Joe Rollins, supervisor - quality, cancellation of orders; c/o Spencers Gifts, 6826 Black Horse Pike, Egg Harbor NJ 08234, (609) 645-3300: Eric Rellosa, merchandise manager; Beth Taylor, vice president - quality, cancellation of orders; c/o Sears, 3333 Beverly Rd, Hoffman Estates IL 60179, (286-2500): Natalie Kaplan, buyer - quality, cancellation of orders; and c/o Counsel for 3E Trading LLC: representative of 3E Trading LLC - licensing.

2. Identify each product bearing the Corona Trademarks that was manufactured, imported or distributed by or on behalf of Defendant from January 1, 2007 to the present.

Response: See Purchasing Report under Tab A.

3. Identify each manufacturer who produced Corona-branded goods on behalf of Defendant and state for each manufacturer the products produced from January 1, 2007 to the present.

Response: See Contact Info and Purchasing Report under Tab A.

In addition, Silverwing Productions, 1210 Goodnight Lane, Dallas, Texas 75229, (972) 243-4396; and Seven Hills, 81 Hope Avenue,

Worcester MA 01603 whose agent is Trilogy, 726 Tobacco Run Drive, Bel Air MD 21015, (410) 734-4891.

4. Identify each retailer or distributor to whom Defendant has sold or distributed Corona-branded goods on behalf of Defendant and state for each retailer or distributor the products sold or distributed from January 1, 2007 to the present.

Response: Defendant objects on the grounds that the request is overbroad and burdensome and seeks information which is not calculated to lead to the discovery of admissible evidence.

Subject to the aforementioned objections, see Sales Report under Tab B. In addition, defendant will provide the last known addresses and telephone number of retailers reasonably and specifically identified by plaintiffs.

5. State Defendant's total sales in units and in dollars of Corona-branded goods for each item sold from January 1, 2007 to the present.

Response: Defendant objects on the grounds that the request is overbroad and burdensome and seeks information which is not calculated to lead to the discovery of admissible evidence.

Subject to the aforementioned objections, \$5,441,904.17 as per the Sales Report under Tab B.

6. Identify any written, oral or recorded statements in any form that Defendant has obtained from any person regarding any of the facts and circumstances surrounding the subject matter of this lawsuit, and, for each such statement (a) identify the person that made the statement, and (b) describe the substance of the statement.

Response: Upon information and belief, none.

7. As of July 26, 2007, state whether Defendant has in its possession, custody or control any inventory of Corona-branded goods, and if so, identify the inventory of each item retained.

Response: Yes. See Inventory Report under Tab C.

8. As of July 26, 2007, state whether Defendant had any orders outstanding for the manufacture of Corona-branded goods and, if so, identify the product(s) and state whether the product(s) has since been delivered to Defendant.

Response: Yes. See Open Orders Report under Tab D and Shipped Report under Tab E.

9. State whether Defendant has distributed, sold, or offered to sell Corona-branded goods to any third parties, including without limitation retailers, wholesalers, discount stores, or liquidators, from July 26, 2007 to the present and, if such items were distributed or sold: identify: (a) the parties to whom the goods were distributed or sold; (b) the goods distributed or sold; and (c) state the total sales in units and dollars of each item sold.

Response: See Shipped Report under Tab E.

10. State all facts that you contend support the affirmative defenses asserted by you in your Answer to the Complaint.

Response: Defendant objects on the grounds that the Interrogatory seeks information protected from disclosure under the attorney-client privileged, the work product doctrine and other privileges. Defendant objects on the grounds that the Interrogatory is vague, overbroad and compound. Defendant also objects on the grounds that the Interrogatory is premature in that discovery has not been completed. Subject to the aforementioned objections, defendant contends, inter alia, that plaintiffs improperly, without basis, in bad faith and in

violation of the License Agreement failed to affirmatively approve and/or authorize products and designs which conformed to contractual guidelines and knowingly permitted allegedly unapproved and/or unauthorized products and designs to be manufactured and distributed and accepted royalty payments therefor.

11. Identify each person whom Defendant may call as a witness on Defendant's behalf in this proceeding, and state, for each such witness, the expected subject matter and substance of his or her testimony.

Response: Defendant objects on the grounds that the Interrogatory seeks information protected from disclosure under the attorney-client privileged, the work product doctrine and other privileges. Defendant objects on the grounds that the Interrogatory is premature in that discovery has not been completed and the case is not trial ready. Subject to the aforementioned objections, see Response to Interrogatory No. 1.

12. Identify the "contracts and other business relations between defendant and certain purchasers" of Corona-branded goods of which Plaintiffs were aware as alleged in paragraph 107 of your Counterclaim.

Response: See documents under Tab F, among other documents previously produced and/or made available in connection with defendant's response to plaintiffs' document request.

13. State the full factual basis for your contention in paragraph 98 of your Counterclaim that "the products submitted conformed to the contractual standards."

Response: Defendant objects on the grounds that the Interrogatory is vague, overbroad and premature in that discovery has not been completed. Subject to the aforementioned objections, defendant states that the individuals involved in the design, development and production of product were aware of plaintiffs' manual and monitored by an individual with experience, among other things.

14. State how Plaintiffs "intentionally, knowingly and by wrongful means" interfered with Defendant's business relations as alleged in paragraph 108 of your Counterclaim.

Response: Defendant objects on the grounds that the Interrogatory is vague, overbroad and premature in that discovery has not been completed. Subject to the aforementioned objections, defendant states that, upon information and belief, plaintiffs surreptitiously circulated communication addressed to third-party licensees of plaintiffs and communicated with accounts of defendant that defendant was in breach of its License Agreement, implied that defendant's License Agreement had been properly terminated and failed to advise that plaintiffs had wrongfully terminated the License Agreement and wrongfully, improperly and without justification failed to approve and/or authorize products and designs for distribution or sale, among other things.

15. Identify each document or other tangible items that were in any manner relied upon in answering these Interrogatories.

Response: See documents submitted herewith.

16. Identify each person who was consulted or provided information in connection with preparation of Defendant's answers to these interrogatories, and state, for each such person, the interrogatory or interrogatories in connection with which he or she provided information or was consulted.

Response: Sam Hafif and Byron Cohen were consulted and/or provided information in connection with the preparation of each of defendant's answers to interrogatories; Austin Mallis, operations technician, prepared reports attached hereto; and Paulette Brown, production, provided information with respect to Interrogatory No. 3, all care of defendant's counsel.

Dated: New York, New York  
January 4, 2008

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IRA DANIEL TOKAYER, ESQ.  
Attorney for Defendant  
42 West 38<sup>th</sup> Street, Suite 905  
New York, New York 10018  
(212) 695-5250



VERIFICATION

STATE OF NEW YORK       )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

SAM HAFIF, being duly sworn, states that he is the  
[TITLE] of the defendant herein, that he has read the foregoing  
Response to Plaintiffs' First Set of Interrogatories and that the  
foregoing is true to his knowledge except as to matters which are  
stated to be upon information and belief and as to those matters  
he believes them to be true.

\_\_\_\_\_  
SAM HAFIF

Sworn to before me this  
day of January, 2008

\_\_\_\_\_  
Notary Public

Interr Resp.wpd